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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
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Implementation of the)
Telecommunications Act of 1996:)
)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other Customer)
Information)

CC Docket No. 96-115

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS TO PETITIONS FOR RECONSIDERATION

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SUMMARY OF ARGUMENT

The Commission's rules restricting a carrier's use of CPNI in offering new categories of service to existing customers are inconsistent with the Universal Service requirements and will delay new service to rural markets. The Commission failed to include the "required by law" exception to CPNI use enacted by Congress in Section 222(c) of the Telecommunications Act of 1996, and must include that exception in Section 64.2005(b) and (c) of its rules.

The CPNI compliance requirements, including software "flagging" and "CPNI access monitoring" are unnecessarily burdensome and expensive and are not required by the Act.

CenturyTel generally supports the Petition for Reconsideration filed by TDS Telecommunications Corporation.

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REPLY COMMENTS TO PETITIONS FOR RECONSIDERATION

Century Telephone Enterprises, Inc. (CenturyTel). by its attorneys, hereby files reply comments emphasizing the need to ensure that the Federal Communications Commission's ("Commission" or "FCC") Customer Proprietary Network Information ("CPNI") rules reflect Congress' intention that customers in rural areas receive innovative and state of the art telecommunications and information services reasonably comparable to those available in urban areas. Specifically, these reply comments concern the Petitions for Reconsideration of the Commission's rules implementing the CPNI provisions of Section 222(c) of the Telecommunications Act of 1996, (the "Act"), 47 U.S.C. § 222(c) (1996).

CenturyTel is dedicated to implementing Universal Service for rural America. CenturyTel provides a variety of communications services to rural communities in 21 states, including local exchange, wireless cellular telephone service (CMRS), long distance, and Internet access services. CenturyTel is a leader in providing a full range of communications and information services to rural America.

CenturyTel's 600 rural exchanges in 21 states provide local exchange service to 1.2 million access lines. Approximately three-hundred (300) of these exchanges have fewer than 1000 access lines each. Only eleven (11) exchanges have greater than 10,000 access lines. All of CenturyTel's operating companies meet the definition of "rural telephone company" under the Act,¹ and CenturyTel is a "rural carrier" serving fewer than 2 percent of the Nation's aggregate nationwide subscriber lines.²

The Commission's rules restricting a carrier's use of CPNI in offering new categories of service to existing customers are inconsistent with the Universal Service requirements and will delay new service to rural markets. CenturyTel generally supports the Petition for Reconsideration filed by TDS Telecommunications Corporation, and submits the following additional comments.

I. Restricting Rural Carriers From Using CPNI to Market New Service to Existing Customers Is Inconsistent With Rural Customer Needs and Desires

The Commission's rules restrict a carrier from using, disclosing, or permitting access to CPNI without customer approval to market services which CenturyTel, its divisions or affiliates presently offer existing rural customers.³ These marketing restrictions will delay the introduction of new, innovative services in rural markets where competition is slow to emerge.

Marketing communications service in rural areas tends to be significantly more informal than in larger markets. Rural telephone companies enjoy close, community-oriented relationships with their customers. CenturyTel continues to use walk-in "Greeting Centers" for bill payment, customer

¹ 47 U.S.C. § 153(37)(1996).

² 47 U.S.C. § 251(f)(2).

³ 47CFR § 64.2005(b)(1).

service, and marketing in many of the rural communities it serves. These centers have become social centers for meeting, greeting and doing business, because many customers prefer to pay their telephone bills in person instead of by mail. CenturyTel's subscribers tend to know CenturyTel's employees and local managers, through customer and family relationships extending over generations.

CenturyTel's customers expect the company to offer a full range of communications services, and to use available customer information to determine what services, features, and equipment can economically be offered in rural communities. Customers expect their LEC to keep them informed on new services, and to use their customer records not only for the provision of existing service, but the introduction of new service.

For example, a customer would expect an insurance agent to open the customer's computerized account information when discussing new coverage or service. Similarly, CenturyTel's Greeting Centers in the past would consult a customer's records when he/she inquired about new ISP services. In the past, an employee could open a customer's records to help explain the service, and determine how best to provide it. The inquiry itself was an implied consent to review customer files.

However, under the new CPNI rules, customer records cannot be opened in connection with new service unless an employee or agent provides a detailed, nine-point notification under 47 CFR § 64.2007(f)(2)(i)-(ix), and the customer gives express prior approval. The notification rules require

remarkable legalistic distinctions which will be impossible to explain to customers orally and comply with the Commission rule to be "comprehensible and not misleading."⁴

For example, one small section of the notification requires that the employee:

Specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, [and] describe the purposes for which CPNI will be used....⁵

Employees will have difficulty providing a comprehensive, not misleading oral notification of the "types of information that constitute CPNI." The notification, whether oral or written, requires a thorough understanding of Section 222 (a), (c), and (f) of the Act, the Commission's 161-page *Second Report and Order* ⁶, and the FCC's *Clarification* ⁷.

Access to CPNI is vital to proper planning and marketing of new services *in rural areas*, in part because the capital investment requirements demand that proper choices be made at the outset. Decisions on the type, quality, or price of services to be offered must be accurate and reliable, and based on the best available information. Otherwise, the effect on capital return can be enormous in communities with only 1000 access lines.

⁴ 47 CFR § 64.2007(f)(2)(iv).

⁵ 47 CFR § 64.2007(f)(2)(ii).

⁶ *In the Matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No 96-115, *Second Report and Order and Further Notice of Proposed Rule Making*, (FCC 98-27)(released February 26, 1998 ("Second Report and Order").

⁷ *In the Matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Order*, DA 98-971 (released May 21, 1998)("Clarification").

The CPNI rules are impossibly legalistic and rigid. The present CPNI rules severely restrict business planning and customer relations in rural markets. Rural carriers should have the flexibility to continue their present and customary marketing and business practices with existing subscribers.

II. Restricting the Use of CPNI in Marketing Enhanced Services and CPE to Existing Customers In Rural Exchanges Is Inconsistent with Universal Service Provisions of the Act.

Section 222(c) of the Act permits a carrier to use CPNI in the provision of new service if "...required by law or with approval of the customer...."⁸ Under the statute, CPNI can be used other than in the provision of subscribed service, including the marketing of new service, either with customer approval, or where "required by law."⁹

In adopting its CPNI rules, the Commission failed to include the "required by law" exception to the restrictions on the use of CPNI.¹⁰ The Commission only included the "customer approval" exception in its rules.¹¹ Thus, the Commission has not enacted CPNI rules consistent with the Act, and must add the "required by law" exception on reconsideration.

Congress has required by law that new communications services be made available to customers in rural areas that are reasonably comparable to those in urban areas, and at reasonably comparable rates:

⁸ 47 U.S.C. § 222(c)(1996).

⁹ 47 U.S.C. § 222(c).

¹⁰ Compare 47 CFR § 64.2005(b) and (c) with 47 U.S.C § 222(c).

¹¹ 47 CFR § 64.2005(b).

Consumers in all regions of the Nation, including...those in rural, insular, and high cost areas, should have access to **telecommunications** and **information** services, including **interexchange** services and **advanced telecommunications** and information services, that are **reasonably comparable** to those services provided in urban areas and that are **available at rates that are reasonably comparable** to rates charged for similar services in urban areas.¹²

Congress required the Commission to adopt policies for the implementation of Universal Service based on these principles.¹³

The CPNI marketing restrictions create an unnecessary inconsistency between the Universal Service and CPNI sections of the Telecommunications Act. The Commission must harmonize the two provisions of law by inserting the "required by law" exception to the CPNI rules, and recognizing that Congress's Universal Service requirements provide an additional exception to the CPNI restrictions.

Congress recognized that introducing advanced communications services at reasonable rates in rural markets would be more difficult than in urban markets. Historically this has been the case.

The local exchange carrier logically is one of the first entities capable of providing new communications services at affordable rates to rural, high-cost areas. However, by prohibiting the use of CPNI to research, introduce, or market new services, the Commission inhibits the ability of the most capable company on the scene from introducing the new services Congress has demanded be available in these markets.

¹² 47 U.S.C. § 254(b)(3)(emphasis added).

¹³ 47 U.S.C. § 254(c).

CenturyTel is precisely the kind of company Congress envisioned to implement the Universal Service standards. For example, Centuryinter.net, a division of CenturyTel, currently provides Internet access to its rural local exchange customers in eleven (11) of the 21 states served by CenturyTel. CenturyTel hopes to expand its Internet Service Provider (ISP) business. However, without ready access to CPNI, CenturyTel's ability to engage in sound business planning for the offering of new categories of service is impeded significantly. Not the least of the impediments is the high cost of complying with the CPNI rules, discussed below in Section III.

The Commission must adopt CPNI rules for rural markets which promote, and do not hinder in any way, the provision of high quality interexchange, information, advanced telecommunications services, and related CPE at rates comparable to urban areas. The Commission should permit rural telephone companies, as defined in Section 153(37) of the Communications Act, to use, disclose, or permit access to CPNI to market to an existing customer in rural areas served by the rural telephone company categories of service to which that customer does not already subscribe.

III. The Commission's Notification, Reporting, and Electronic Monitoring Mechanisms are Burdensome and Expensive to Implement

The new compliance rules will be burdensome to implement, and are so complex and rigid that they present numerous implementation and monitoring problems in the smaller rural markets CenturyTel serves. CenturyTel discusses its specific objections below.

Notification. The rules require "comprehensible" and not misleading notification of what constitutes CPNI, how CPNI could be used, and the customer's right to withdraw access to CPNI at any time.¹⁴ The CPNI rules are so complex, and the notifications so exacting, that oral notification

¹⁴ 47 C.F.R. § 64.2007(f)(2)(ii).

is virtually impossible, especially where the carrier has the burden of proof that proper oral notice was given.¹⁵ Flexible oral notification and approval are important in small markets. The notification requirements should be simplified to effectively permit oral notification and approval in a few short sentences.

Software "Flagging" of CPNI Approval Status. CenturyTel estimates that it will cost tens of thousands and perhaps hundreds of thousands of dollars to implement software changes for its local exchange systems in 21 states in order to identify "CPNI approval and reference the customer's existing service subscription."¹⁶ Century will also incur substantial additional expense to maintain the CPNI "flagging" and monitoring systems¹⁷ through periodic software upgrades and hiring additional trained personnel.

Software "flagging" is not required by Section 222. CenturyTel needs the flexibility to implement CPNI software programs suitable to its individual record filing and retention systems in its 600 local exchange markets. CenturyTel does not dispute that software "flagging" may be appropriate for markets larger than its own, where flagging can be implemented inexpensively. It does believe that the FCC's rules should be flexible enough to account for the rural characteristics of CenturyTel's exchanges, half of which have less than 1000 access lines.

¹⁵ 47 C.F.R. §64.2007(c).

¹⁶ 47 C.F.R. §64.2009(a).

¹⁷ Supervision of CPNI "safeguard" programs is necessary to set the pre-requisite for compliance certification. 47 CFR § 64.2009 (a)-(e).

Electronic Audit Mechanism. The requirement that carriers establish an electronic audit mechanism¹⁸ to track access to customer accounts is a most burdensome, unnecessary, and expensive imposition on scarce company resources. This rule will require the redesign of CenturyTel's entire computer systems for providing customer service. The rule requires the tracking even of *permissible* uses of CPNI, and storage of this tracking information for one year. This would require data input and tracking for every daily business function of the company which opens or uses a customer's record.

The redesign of information systems necessary to implement the "CPNI tracking rule" could increase the cost of service in rural areas, and will likely take more than eight months to implement. This rule is a very expensive disruption of established business practices. Carriers should have broad flexibility to develop systems for preventing unauthorized access to CPNI. Carriers should not be required to track every use, including permissible uses, of CPNI, in the ordinary course of business.

Corporate Officer Certification. The FCC requires a corporate officer with personal knowledge to certify annually that the company is in compliance with the CPNI rules.¹⁹ This unusual certification is virtually impossible to comply with even in a medium-sized company such as CenturyTel. One alleged violation a year makes certification impossible, and places the company out of compliance. The certification exposes a corporate officer to grave liability if his/her personal knowledge does not encompass all of CenturyTel's activities in 600 local exchange markets.

¹⁸ 47 C.F.R. §2009(c).

¹⁹ 47 CFR § 64.2009(e).

The rule requires a certification of *absolute* compliance with all CPNI rules. This is more than may be humanly possible, and thus the requirement is arbitrary and capricious. Instead of a certification of compliance, a carrier should only be required to report annually on the efforts taken to comply, any complaints filed, or any disputes which have occurred, and the efforts taken to correct any problems identified.

CONCLUSION

Based on the foregoing, Century Telephone Enterprises, Inc., respectfully requests that the Petition for Reconsideration by TDS Telecommunications Corporation be granted.

Respectfully submitted.

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July 6, 1998

CERTIFICATE OF SERVICE

I, Yvonne Skinner, do hereby certify that on this 6th day of July, 1998, I have caused a copy of the foregoing "REPLY COMMENTS TO PETITIONS FOR RECONSIDERATION" to be served, via first-class United States Mail, postage prepaid, upon each of the following:

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